

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

STATE OF TEXAS, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	2:21-CV-229-Z
	§	
XAVIER BECERRA, in his official capacity	§	
as Secretary of the United States Department	§	
of Health and Human Services, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**ORDER**


Before the Court is Defendants’ Motion to Stay Proceedings in light of Nationwide Preliminary Injunction (ECF No. 35) (the “Motion”). Having considered the procedural history and Defendants’ Motion, the Court **DEFERS** ruling on the Motion until after the scheduled hearing on **December 2, 2021 at 9:00 AM CST**. At said December 2 hearing, Defendants and Plaintiffs should be prepared to explain and argue their opposing views on the Motion.

Additionally, Defendants must state with particularity *how* the named Defendants will comply with the “nationwide preliminary injunction” of the interim final rule, 86 Fed. Reg. 61,555-01 (No. 5, 2021) (hereinafter “CMS Vaccine Mandate”) issued by the United States District Court for the Western District of Louisiana on November 30, 2021. *See Louisiana et al. v. Becerra et al.*, No. 3:21-CV-03970, 2021 WL 5609846 (W.D. La. Nov. 30, 2021); *but cf.* ECF No. 35 at 1 (“The preliminary injunction entered by the Western District of Louisiana *obviates any need for a preliminary injunction here ....*”) (emphasis added).

Specifically, Defendants must explain *how* Defendants will notify, update, or advise the “Medicare- and Medicaid-certified providers and suppliers” who must comply with the CMS Vaccine Mandate “by December 6, 2021” that the CMS Vaccine Mandate will *not* be implemented or enforced until further Court order in Case No. 3:21-CV-03970, 2021 WL 5609846 (W.D. La. Nov. 30, 2021).<sup>1</sup> Defendants must also explain if Defendants are willing and prepared to *delay* the effective date of the CMS Vaccine Mandate’s penalties. *See, e.g.*, THE WHITE HOUSE SAFER FED. WORKFORCE TASK FORCE, ENFORCEMENT OF VACCINATION REQUIREMENT FOR EMPLOYEES UPDATED (2021), <https://www.saferfederalworkforce.gov/faq/vaccinations/> (last visited Dec. 1, 2021). Finally, Defendants should review and be prepared to discuss Exhibit A as an example of Defendants’ previous compliance with similar injunctions subject to appellate review. *See* Exhibit A.

**SO ORDERED.**

December 1, 2021.

  
MATTHEW J. KACSMARYK  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Here, the relevant “Medicare- and Medicaid-certified providers and suppliers” are listed at pages 61,569-70 of the CMS Vaccine Mandate.

**EXHIBIT A**

Coronavirus Disease (COVID-19) / COVID-19 Vaccination and Testing ETS

## EMERGENCY TEMPORARY STANDARD

# COVID-19 Vaccination and Testing ETS



### Comment Period

The ETS on Vaccination and Testing was published in the Federal Register on November 5, 2021. The ETS also acts as a proposal for a permanent standard and OSHA has decided to extend the comment period for that rule by 45 days. Written comments on any aspect of the ETS must now be submitted by January 19, 2022 to [www.regulations.gov](http://www.regulations.gov) in Docket number

OSHA-2021-0007, which is the only way that OSHA is receiving comments on the ETS. Written comments on the information collection request as described in Section V.K. of the ETS preamble [2021-23643] must still be submitted by January 4, 2022 in Docket number OSHA-2021-0008.

Find information on the COVID-19 Healthcare ETS or on Coronavirus Disease (COVID-19).

### Litigation Update

On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard, published on November 5, 2021 (86 Fed. Reg. 61402) ("ETS"). The court ordered that OSHA "take no steps to implement or enforce" the ETS "until further court order." The U.S. Court of Appeals for the Sixth Circuit now has jurisdiction over ETS challenges and DOL has filed a motion to lift the stay. While OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments in the litigation. Note that the comment period is separate from the litigation.

## About the Standard

ETS Regulatory Text (29 CFR 1910, Subpart U)

- 1910.501 - Vaccination, Testing, and Face Coverings
- 1910.504 - Mini Respiratory Protection Program
- 1910.505 - Severability
- 1910.509 - Incorporation by Reference

Federal Register (PDF)

Ratification Document (PDF)

Materials Incorporated by Reference

News Release

Webinar

Fact Sheets

- About the ETS
- ETS Summary
- How You Can Provide Comments (Spanish)

FAQs

Social Media

Toolkit (Spanish)

## Implementation

Policy Templates

- Mandatory Vaccination Sample
- Vaccination or Testing and Face Covering Sample

Fact Sheets

- Workers' Rights (Spanish)
- Penalties for Knowingly Supplying False Information (Spanish)
- Reporting COVID-19 Fatalities and In-Patient Hospitalizations

## Additional Resources

Information on Vaccination

Finding a Vaccine

Testing

Reasonable Accommodation

Labor Rights



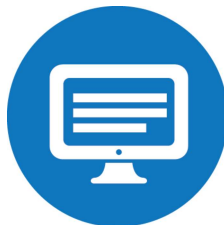
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## UNITED STATES DEPARTMENT OF LABOR

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